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# The Dual State in Russia

Richard Sakwa<sup>1</sup>

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**Abstract:** Russia today is characterized by two competing political orders. The first is the constitutional state, regulated by law and enshrining the normative values of the democratic movement of the late Soviet period and contemporary liberal democracies, populated by political parties, parliament, and representative movements and regulated by electoral and associated laws. The second is the administrative regime, which has emerged as a tutelary order standing outside the normative state although not repudiating its principles. Drawing on the political science literature to develop a dual-state model, this article examines the regime *system*—its constituent elements and dynamics—to provide a better theorized framework for understanding the dynamics of regime politics.

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Contemporary Russian politics can be characterized as a struggle between two systems: the formal constitutional order, what we call the *normative state*; and a second world of informal relations, factional conflict, and para-constitutional political practices, termed in this article the *administrative regime*. We use the term “para-constitutional” deliberately, because the political regime and its factions do not repudiate the formal constitutional framework but operate within its institutional constraints while subverting its spirit. We argue that a *dual state* has emerged on the basis of the two systems, and much of politics takes place in the charged zone between them. Therefore, it would be incorrect to label contemporary Russia an authoritarian regime *tout court*, since not only does it remain formally committed to constitutional democracy and liberal capitalism, and these endure as the source of its popular legitimacy, but these commitments moderate its behavior and allow the formal constitutional framework to structure and influence the conduct of politics. Although

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<sup>1</sup>Professor, School of Politics and International Relations, University of Kent, UK. I would like to thank Bill Bowring, Karen Dawisha, Jonas Graetz, Kathryn Hendley, Vladimir Pastukhov, William Pomeranz, Peter Solomon, and Alexei Trochev for their comments on various aspects of this article. Their contributions have been profound, but I take full responsibility for the views and faults.

some of the regime's actions may be authoritarian in spirit, the formal niceties of a constitutional democracy remain pre-eminent and the legitimating framework for the system as a whole.

I argue elsewhere that the concept of "regime" (rather than government or administration) is the preferred term to describe the power system that took shape during Boris Yel'tsin's presidency in the 1990s and which was consolidated under Vladimir Putin in the 2000s (Sakwa, 1997, 2010a, 2010b). The regime-state that was born in the period of "phony democracy" following the collapse of the communist order in August 1991 and the bloodshed of October 1993, following two years of confrontation between parliament and the presidency, in systemic terms reproduced certain governmental practices of the party-state (Dunlop, 1993; Sakwa, 2008a, part I). The new Russian revolution of 1991 did not bring an alternative coalition to power since there had been no counter-elite, like Solidarity in Poland, waiting in the wings. Instead, the popular democratic movement was quickly marginalized and the change of government was largely intra-systemic (McFaul, 2001). The development of independent parties was stymied, and instead a reconfigured dominant power system reasserted itself in the form of an administrative regime. The notion of regime in this sense has a long pedigree in political science, and is used to contrast an under-institutionalized power system in contrast to a government, which sits firmly in some sort of legal-constitutional regulation of power relations within a substantive institutional framework. A regime is inadequately constrained by the constitutional state from above and lacks effective accountability to the institutions of mass representation from below (parliament, political parties, and civil society generally).

The "regime" is at the center of a shifting constellation of forces that does not operate according to the legal precepts of the normative state but applies para-political stratagems to advance its goals. The presidency is at the heart of the regime but is not limited to it. The decline in public politics and party contestation has been accompanied by the development of para-political group activity. Political and social interests come together in informal factions, notably in the form of three meta-groups conventionally labeled the "*siloviki*" (those affiliated with the security services), the "democratic-statists" (who advance the notion of "sovereign democracy"), and the "liberal-technocrats" (whose commitment to liberal economic policies was tempered by a reliance on the state to achieve their goals), accompanied by at least three other identifiable spheres of interest, if not interest groups in the traditional meaning of the term.<sup>2</sup> Although there is an extensive literature on Russia's regime *type*, the nature of the regime

<sup>2</sup>The other three comprise the neo-oligarch interest, sometimes called the old Muscovites (previously "the family"), favoring the development of an independent bourgeoisie; the big-business lobby that is ready to work in a subaltern relationship with the state, known as "state oligarchs" of the Oleg Deripaska and Roman Abramovich sort; and the uneven influence of the regional bosses, notably in Moscow city and some of the Caucasian and Volga republics.

*system*—its constituent elements and dynamics—remain under-theorized. It is more than personalized leadership or neo-patrimonialism, but less than an institutionalized, law-governed system. The development of the dual state model is an attempt to provide a more developed theoretical framework to understand the dynamics of regime politics.

## A NEW DUAL STATE

It has become something of a truism that Russia is a hybrid regime state combining democratic and authoritarian features (Shevtsova, 2001; see also Diamond, 2002). Furman, for example, describes many of the states in post-Soviet Eurasia as "imitation democracies," a "combination of democratic constitutional forms with a reality of authoritarian rule." Such systems emerge "when conditions in a given society are not ripe for democracy, and yet there is no ideological alternative to it" (Furman, 2008, p. 39). This is a classic instance of what Antonio Gramsci called a passive revolution, defined as "an abortive or incomplete transformation of society." This can take a number of forms, including one where an external force provokes change but lacks a sufficiently strong domestic constituency and runs into the resistance of entrenched interests. When the forces are equally balanced a stalemate emerges, giving rise to a situation of "revolution/restoration" (Cox, 1999, p. 16). The Putin administration continued the revolution in property and power begun in the late Gorbachev years, but at the same time restored elements of the previous regime. The post-communist leadership remained committed to a moderate state-led modernization process, accompanied by a constrained liberal democratization project, but lacked the resources or the will to achieve either full-scale Thermidorean reaction or breakthrough into unconstrained liberal democracy. Promoted as the ideology of reconciliation, the inconclusive nature of the system took the form of a dual state, with all of its accompanying contradictions.

The interaction of genuine constitutionalism and nominal para-constitutionalism in Russia can be compared to the development of the dual state in Germany in the 1930s. Ernst Fraenkel (2006) described how in Nazi Germany the prerogative state acted as a separate law system of its own, although the formal constitutional state was not dismantled. Two parallel systems of law operated, where the "normative state" operated according to sanctioned principles of rationality and impartial legal norms while the "prerogative state" exercised power arbitrarily and without constraints, unrestrained by law. In Fraenkel's words, "By the Prerogative State we mean that governmental system which exercises unlimited arbitrariness and violence unchecked by any legal guarantees, and by the Normative State an administrative body endowed with elaborate powers for safeguarding the legal order as expressed in statutes, decisions of the courts, and activities of the administrative agencies" (Fraenkel, 2006, p. xiii). The Nazi regime breached the formal rules with impunity, but where the authorities chose not to assert their prerogatives, "private and public life are regulated either by the traditionally prevailing or newly enacted

law" (Fraenkel, 2006, p. 57). The normative state was largely concerned with regulating the capitalist economy, while the prerogative state dealt with the regime's enemies and controlled political activity. Court records studied by Fraenkel demonstrated that as time passed, the prerogative state encroached ever more on the impartial rules of the normative state (Fraenkel, 2006, pp. 241–244).

Gordon Smith notes that in the Soviet period the duality was strongly developed as well, and in particular, "The legal system in the USSR under Stalin clearly resembled Fraenkel's 'dual state'" (Smith, 1996, p. 34). This has been described in detail by Robert Sharlet, noting that "Soviet legal culture under Stalinism can be most clearly understood within what can be described as a dual system of law and terror" (Sharlet, 1977, p. 155). This took the form of a permanent tension between the principles of *partiynost'* (party-mindedness) and *zakonnost'* (legality), with the prerogative state "governed directly by the rule of force," while the normative state was "regulated through a system of sanctioned legal norms prescribing the permissible boundaries of interpersonal relations and citizen-state relations." There was a fundamental distinction between ordinary and "political" cases, with *partiynost'* unequivocally taking precedence in the latter (Sharlet, 1977, p. 156), a differentiated application of law that also applies to post-communist Russia. In the post-Stalin years, the boundary of *zakonnost'* expanded, but in keeping with Carl Schmitt's postulate that the sovereign is the one who can decide on the exception,<sup>3</sup> the persecution of dissent in the Brezhnev era was firmly located in the realm of *partiynost'*.

Crucially, however, Sharlet stresses the differences between the Soviet and German models of the dual state. First, in Germany the prerogative state was introduced by decree, whereas in the Stalinist period, Sharlet argues, it was "basically received from pre-revolutionary Russia." Second, the development of the dual state in Germany marked a shift "from political rationality to political radicalism," whereas "the Soviet dual state reflected the constant, dynamic interaction of these tendencies." Third, the Nazi party was the constitutive element of the prerogative state, while the Soviet Communist Party both in theory and mostly in practice "has been outside of, and in control of, the dual state." This is a feature of the dual state in Russia today, with the presidency representing a force that is implicated in both pillars of the dual state but is controlled by neither. Equally, the dominant "party of power," United Russia, is a subaltern organization acting as an instrument of the administrative regime and is not permitted autonomously to dominate the sphere of competitive party politics within the impartial rules of the constitutional state.

<sup>3</sup>Defined by Carl Schmitt, the "exception" is the ability of the sovereign to make decisions outside the framework of normative law. As he put it in the opening of his work on the subject, "Sovereign is he who decides on the exception" (Schmitt, 1985, p. 5).

Fourth, in Germany the prerogative state was typically restricted to the political sphere while the normative state operated mainly in the non-political private part of society, but in Soviet Russia the distinction between public and private spheres barely held (except possibly for the brief period of the New Economic Policy in the 1920s) and instead, Sharlet notes, "the dual state has exercised jurisdiction over different sectors of a fundamentally politicized society." Finally, the German normative state was grounded in private law and modern German history, whereas in the Soviet Union the public/private law distinction was irrelevant, and therefore what there was of the Soviet normative state already lacked deep roots in the pre-revolutionary system and was based on public law (Sharlet, 1977, pp. 155–156, fn. 2). The blurring of the public and the private continues into the post-communist era, and this fundamental failure to choose between different types of order (for example, a market or a managed economy) means that no coherent or consistent policies (*Ordnungspolitik*) appropriate for the system chosen are applied and instead an unstable mix of both is pursued.<sup>4</sup>

In the post-Stalin era there was an increasing emphasis on "socialist legality," and although egregiously politicized trials of dissidents demonstrated the enduring power of prerogative authority, there was a growing recognition of the importance of independent courts, reflected in notions of "developed socialism" and the "people's state."<sup>5</sup> The normative importance of the rule of law became one of the overriding concerns of *perestroika* in the late 1980s. Gorbachev's reforms were one of the most profound attempts to overcome state duality by bringing the political regime within the ambit of constitutional authority. As noted above, however, between the fall of the Soviet system and the creation of a constitutional state in Russia the period of chaos and revolutionary transformation allowed an autonomous power system to consolidate itself independently of social movements and constitutional constraints. At the same time, there were limits to the autonomy of the administrative regime, not least of which was its own self-image as the embodiment of the democratic aspirations of the anti-communist revolution and the rooting of the legitimacy of its rule in the constitutional order that was subsequently created. It is out of this double movement that a binary political order emerged.

It is within the framework of these theoretical considerations that the dual state model can be fruitfully applied to developments in post-communist Russia. Robert Amsterdam, international defense council for Mikhail Khodorkovskiy, has drawn attention to the parallels, and his analysis

<sup>4</sup>The idea of "order-based" policy comes from the "ordo-liberals" in the Freiburg school of political economy, and notably in the ideas of Walter Eucken, who provided the intellectual framework for the creation of the social market economy in the postwar Federal Republic of Germany based on the appropriate *Ordnungspolitik*. For a good account, see Gerber (1994).

<sup>5</sup>For a classic discussion, see Burlatskiy (1978), especially Chapter 3, "The Political System of Developed Socialism," pp. 99–158, with comments on law at p. 125.

contains many insights on the way that the rule of law was subverted in the Yukos case, where the courts were used effectively to expropriate the oil company and to send Khodorkovskiy and selected associates to jail on dubious charges (Sakwa, 2009; Sixsmith, 2010). Amsterdam notes that "The prerogative state accepted that the courts were necessary to assure entrepreneurial liberty, the sanctity of contracts, private property rights and competition, but this did not mean that the courts or the law were inviolable" (Amsterdam, 2008, p. 2). For Fraenkel, the destruction of legal independence was the central feature of the prerogative state (Fraenkel, 2006, p. 24). As Knoops and Amsterdam put it, "the concept of the Dual State implies that, despite the normative value and safeguards of certain legal mechanisms in terms of checks and balances, the entire legal system can become or de facto function as an instrument at the disposal of the political authorities" (Knoops and Amsterdam, 2007, p. 263). This is indeed the case, but the process also works in the reverse direction, with the normative state in Russia tempering the arbitrariness of the administrative regime, our synecdoche for the prerogative state.

There are obvious limits, recognized by Amsterdam, to the applicability of the model to Russia, above all because of the "uniquely horrific" way in which it was applied by the Nazis, and the application of the dual state model does not imply any moral or political equivalence. Even within the realm of political practices there are stark differences. In Germany, the regime openly proclaimed the priority of non-constitutional imperatives as the guiding principles of the state—above all, the word and will of the Führer—whereas in Russia the fundamental legitimacy of the regime is derived from its being embedded in a constitutional order that it is sworn to defend. On the other side, Germany had a long history of robust constitutionalism, whereas Russia lacks a strong constitutional culture, and thus, the rule of law and the independence of the judiciary are at best tenuous. The two wings of dualism are less pronounced than in Germany, where dualism took the form of the open assault of the prerogative state on the entrenched constitutional order. Nevertheless, the tension between the two systems defines the political order in Russia.

Social relations in the administrative regime tend to be personalized, while impartial rules are the operative code of the normative order. In Nazi Germany the constitutional and prerogative states coexisted but with the prerogative state firmly in the ascendant, whereas in Russia the two are roughly matched and their *interaction* is the defining feature of the regime. These are discrete subsystems but the two are not insulated, and hence, Russian politics today is a dyadic order in which the two pillars of the dual state are in a constant interaction, the essence of its hybridity. Although the rule of law in Russia remains fragile and, as the Yukos affair amply demonstrated, is susceptible to manipulation by the political authorities, no fully-fledged prerogative state has emerged with anything like the same powers as in Germany or even in Soviet Russia. Instead, we have a diffuse yet powerful administrative regime, recognizing its subordination to the normative state on the one side and its formal accountability

to the institutions of mass representative democracy on the other but able to act independently of both. For this reason, we avoid the term "prerogative state" and instead use the concept of "administrative regime" as the protagonist of the normative state.

There is no prerogative state as such in Russia, constituted through formal but extra-constitutional decrees or laws, but instead there is informal behavior by an administrative regime that fulfils some of the functions of the prerogative state but has no independent legal or institutional status of its own. The administrative regime is a network of social relations, in which political and economic power are entwined in a shifting landscape of factional politics, and it also functions as an actor in the political process. It thus has a passive element, acting as an arena of intra-bureaucratic contestation (since the social basis of the administrative regime overwhelmingly lies in Russia's burgeoning bureaucracy); but it also has agency features, allowing active purposive behavior. Indeed, the *raison d'être* of the administrative regime is its presumed functionality. From the very beginning, the Yel'tsin administration advanced policies that were not derived from the operation of the democratic order itself, and thus, by this trope was able to exempt itself from accountability to the nascent constitutional order. The logic of functionality changed under Putin, but the fundamental principle of the proclaimed need for a technocratic administrative order to provide extra-political leadership in a divided and threatened society remained.<sup>6</sup> The presidency is only one element, although obviously a crucial one, of the administrative regime, but at the same time, reflecting the bivalency of the dual order, it can also act in defense of the constitutional state—an endeavor that President Dmitry Medvedev accentuated from 2008.

In Russia, both systems emerged at the same time and are therefore more in balance than the earlier German, or even Soviet, model. Whether the two are commensurate is a fundamental question, and one which remains hotly contested. My argument is that the two pillars of rule are more than a façade, and each carries defined political weight. Both subsystems are hegemonic, in the sense that they are each associated with what Gramsci would call a "historical bloc," a vision of the appropriate social order carried by specific social groups and elites. The tragedy of Russian post-communism is that these two blocs have become locked into stalemate, preventing a radical move towards a more genuinely open and competitive political system and a debureaucratized economy. The triumph of Russian post-communism, however, is that the impasse has also prevented regression towards full-blown authoritarian restoration. The factional structure of the administrative regime does not predominate over formal political institutions. Instead, the system remains liminal, with its further evolution to be determined by the changing balance

<sup>6</sup>The functional logic is openly proclaimed by the democratic statist, notably by Vladislav Surkov in the Presidential Administration, while practiced rather more slyly by the *siloviki*.

of power between the constitutional state and the administrative regime. The dynamics of the two systems are the subject of the rest of this article.

### PARA-CONSTITUTIONALISM: TWICE AS MANY AND HALF AS MUCH

The experience of the period of "phony democracy" in the early 1990s (which was also characteristic of the final two years of the Soviet system from 1989), when the Russian parliament acted as a permanent constituent assembly, shifted Russia's elites towards a position of constitutional conservatism. The 1993 constitution is hard but not impossible to amend, but even with a constitutional majority, the Putin administration did not make any amendments, adopting a strict line of constitutional stability.<sup>7</sup> However, instead of politics taking the form of normal constitutional routine, it had recourse to para-constitutional strategies. Institutional development as well as politics was played out in a parallel terrain, an aspect of the dualism discussed above. In the new period of constitutional stasis, change takes place preeminently not through constitutional change but through para-constitutional innovation.

In the administrative regime, rather than structures and rules providing the framework for order, political actors bend structures and rules for their own ends. At the same time, they create new ones, bypassing the formal constitutional order. From the very first days of post-Soviet governance, the problem of duplication of administrative structures was apparent, initially focused on the structures of the dual executive as both the cabinet and the presidency created agencies with overlapping functions (Huskey, 1995). The Presidential Administration developed as a type of surrogate government (Huskey, 1999). The rush to the market in the 1990s, designed to dismantle the institutions of the planned economy in the shortest historical time, entailed a high degree of "institutional nihilism": "At that time, people tended to think that the market needed little in the way of management" (Yurgens, 2008, p. 36).

The characteristic feature of institutional nihilism was the creation of a number of para-constitutional institutions that undermined the spirit of the 1993 constitution, but provided important integrative functions. Formal hierarchical structures were unable to generate adequate ordering mechanisms, while the lack of development of intermediate political structures opened up a gulf between state and society, which threatened both to isolate the state and to marginalize social forces. The creation of para-constitutional agencies attempted to fill the gap by manual means,

<sup>7</sup>The first substantive constitutional change since 1993 extended the presidential term to six years and parliament's to five years, to apply after the current terms ended. The legislation was rushed through the Federal Assembly in three weeks in November 2008 and ratified by the 83 regional legislatures within a month, and was signed into law by Medvedev on December 30.

reflecting neither spontaneous social development nor the formal provisions of constitutional law while not repudiating those provisions. The political analyst and former political adviser Sergey Kurginyan precisely analyzes this politics behind the scenes, which he calls *parapolitika* or "under the carpet" politics (Kurginyan, 2008).

Putin's key goal was to enhance state capacity, defined as the ability of state agents to achieve a desired effect on "existing non-state resources, activities, and interpersonal connections" (Tilly, 2007, p. 34). Tilly highlights the possible paradoxical effect of Putin's consolidation of state authority. By reducing the power of autonomous power clusters, notably "capitalists who had acquired extraordinary independence from state control" (Tilly, 2007, p. 137), democratization could be enhanced by achieving a more direct relationship between the state and its citizens. The elimination of alternative sources of rule enforcement had already been achieved with the weakening of the power of "violent entrepreneurs" (Volkov, 2002). The field was clear for citizens to gain greater collective capacity, but our dual state model explains why this was not achieved. The vacuum was filled not by autonomous public bodies but by agencies of the administrative regime. Equally, as Hale argues, at the heart of Putin's reconstruction of the party system was the destruction of "party substitutes," notably regional agglomerations (Hale, 2006). The regime ensured that the remaining parties offered no threat to its claimed managerial prerogatives, including even the putative "party of power," United Russia (Reuter and Remington, 2009).

Nevertheless, Tilly's argument brings out the ambivalence of policy in the dual state context. He notes, "If, in the future, the Russian state again becomes subject to protected, mutually binding consultation in dialogue with a broad, relatively equal citizenry, we may look back to Putin as the autocrat who took the first undemocratic steps toward that outcome" (Tilly, 2007, p. 137). This indeed remains possible, but the first step would be the subordination of the administrative regime to the institutions of the constitutional state. Alternative power sources in society have been weakened, above all, in the form of the "over-mighty" subject in the guise of the so-called oligarchs and independent regional bosses, but instead of the ground being cleared to enhance greater competitiveness in the sphere of public politics, pluralism was internalized into the administrative regime in the form of factionalism. Public pluralism gave way to intra-regime contestation, leaving popular social movements out in the cold.

In the administrative regime, para-constitutional behavioral norms predominate that, while not formally violating the letter of the constitution, undermine the spirit of constitutionalism. This is a feature that was already identified in American presidentialism in the 1980s (Riggs, 1988), and it has, if anything, intensified since then. As in America, para-constitutional behavior gets things done, but is ultimately counter-productive because reliance on bureaucratic managerialism undermines popular trust and promotes self-interested behavior on the part of elites. During Putin's presidency, the practices of para-constitutionalism were

sharply accentuated. His regime, in the main, was careful not to overstep the bounds of the letter of the constitution, but the ability of the system of managed democracy to conduct itself with relative impunity and lack of effective accountability means that it was firmly located in the grey area of para-constitutionalism. The Russian form of managed democracy is far from being a soft variant of the Soviet system, *pace* Furman, but an entirely new order with its own regularities and practices (Furman, 2006). It has, however, reproduced dualism, but in very different forms.

A number of key institutions are involved in the practice of para-constitutionalism. The first is the seven federal districts, established in 2000, which were subordinated to the presidency and thus technically did not require constitutional validation. However, the insertion of an administrative tier between the central authorities and the regions could not but change the nature of Russian federalism. Equally, the shift from the election to the appointment of governors in December 2004 entailed a fundamental change that bypassed the constitutional process (although approved with reservations by the Constitutional Court). The second was the creation of the State Council in September 2000, a body composed of the heads of Russia's regions operating in parallel with the upper chamber of Russia's parliament, the Federation Council. The counterpart of the State Council was a Legislative Council, created on May 21, 2002 to allow the heads of legislative assemblies to take part in the discussion of national policies. The third para-constitutional body is the "Presidential Council for the Implementation of the National Projects," established in autumn 2005 to advance the four national projects in housing, education, health, and agriculture announced in September of that year. The Council was chaired by the president and consisted of 41 members, and was responsible for an initial budget of \$4.6 billion. Medvedev was appointed to head the national projects, and thus was provided with a platform to launch his bid for the presidency. The Council worked in parallel to the government and clearly undermined the authority of the prime minister. By bringing together the various executive and legislative agencies in this way, the Council also undermined the separation of powers (Oversloot, 2007, pp. 61–63).

The fourth main para-constitutional body is the Public Chamber (*Obshchestvennaya Palata*). In his speech of September 13, 2004, which announced a whole raft of measures in the wake of the Beslan hostage crisis, Putin argued that a Public Chamber would act as a platform for broad dialogue, to allow civic initiatives to be discussed, state decisions to be analyzed, and draft laws to be scrutinized. It would act as a bridge between civil society and the state (Ob Obshchestvennoy Palate, 2005). The Chamber monitors draft legislation and the work of parliament, reviews the work of federal and regional administrations and offers non-binding recommendations to parliament and the government on domestic issues, investigates possible breaches of the law, and requests information from state agencies. The Public Chamber introduced a new channel of public accountability against overbearing officialdom, and thus usurped what

should have been one of parliament's key roles. It acts as a type of "collective ombudsman" and as a feedback mechanism since formal channels are blocked. It also allows steam to be let off before conflicts take on a regime-threatening character. It works as a "lightning rod" designed to legitimize the existing order and to mobilize support, and "to elicit but also to contain popular initiatives that contribute to the effective governance of Russian society" (Richter, 2009a, p. 61). Some of the Chamber's members proved quite bold in their criticism of the authorities, and their access to key officials and public opinion allows them to exert significant leverage in some high-profile cases (Evans, 2008).

By critically engaging with popular concerns, the Public Chamber further diminished the role of parliament, which democratic theory suggests should act as the primary tribune for the expression of popular concerns. The Public Chamber sought "both to exemplify and reinforce the vision of state and society promulgated by the Kremlin administration after 2004," and they were established across the regions "to help establish more uniform expectations about the role of state and society throughout Russia" (Richter, 2009b, p. 8). Similar bodies were established in Russia's more authoritarian neighbors. In Kazakhstan, a Public Chamber was established to include representatives of the parties that failed to enter the republic's parliament in the 2007 elections; and since only the presidential party, Nur Otan, crossed the threshold (winning no less than 94 percent of the vote), this para-constitutional body became more representative than the official parliament. In Belarus, a people's congress (*Vsenarodnoye Sobraniye*) was established, consisting of President Aleksandr Lukashenko's personal nominations. The dominance of personal power in the republic at first did not allow Russian-style factionalism to emerge, but in later years it became more apparent. The creation of these social corporatist bodies of managed representation hark back to the era of fascism in the 1930s as well as to Soviet-style controlled participatory mechanisms.

Para-constitutional accretions to the constitution were designed to enhance efficacy but in practice undermined the development of a self-sustaining constitutional order and the emergence of a vibrant civic culture and civil society, and, above all, denied the supremacy of the normative state. The spirit of constitutionalism was undermined by the failure of the Russian political class to subordinate itself to the constitution. In Russia, patronage politics differ from those predominant in developing countries because of the lack of a traditional autonomous social class whose power derived from historically accumulated wealth rather than access to the state. The political order in these countries is used primarily to defend accrued privileges rather than to serve as an instrument of wealth-creation. In Russia, the political order defends the privileges of the administrative class, which, in a patrimonial way, itself became the organizer, if not the outright owner, of economic property and thus the regulator of enrichment.



## PARA-POLITICS: THE SHADOW WORLD OF THE ADMINISTRATIVE REGIME

Para-constitutional innovations were accompanied by the luxuriant development of what may be termed para-political practices. These are forms of political activism not envisaged by the constitution, notably formal party politics and pluralistic elections. Instead, para-politics is a form of politics that is hidden and factional. By contrast with public politics, para-politics focuses on intra-elite intrigues and the mobilization not of popular constituencies and open interests, but of organizational and situational capital. The creation of "parastatal" political parties, notably Just Russia, is a classic example of the way that para-politics works (March, 2009). The regime devised para-political operative rules on political life that deprived it of the grounded antagonistic competition that is an inherent feature of a genuinely open political process. This, for example, rendered the 2007–2008 electoral cycle a sterile arena for the enactment of decisions that were made elsewhere. The performance, however, was not deprived of a certain legitimating logic and competition over popular preferences, and thus, a degree of genuine engagement remained that was reflected in a relatively high turnout. However managed elections may be, parties still have to fight for their share of the vote. The regime on the whole did not need to have recourse to overt coercion, yet even limited ballot-rigging undermined its own legitimating discourses. The regime was thus caught in a double-bind of its own making, appealing to the electoral process to maintain its mandate but its undoubted reliance on administrative resources undermined one of the foundations on which its rule was based.

Even without this intervention in 2007–2008, the regime would have achieved its goals—a strong parliamentary majority and the election of the appropriate successor. In those elections, fear of giving dualism political form was evident when the idea of allowing the two approved regime parties, Just Russia and United Russia, to compete on equal terms in the parliamentary ballot of December 2, 2007 was dropped. Equally, the initial idea of running two approved candidates against each other in the presidential ballot on March 2, 2008 (Medvedev and Sergey Ivanov) was abandoned. From the regime's perspective, allowing even this degree of managed competition would have entailed the risk of the protagonists aligning with the cleavage of the normative versus the administrative state, which not only would have been fundamentally destabilizing but risked bringing the tension between the two constitutional orders up to the level of open political conflict. The potential for this was carried over into the operation of the "tandem" from 2008 of Medvedev as president and Putin as premier, although their political personalities are too similar to allow a simple mapping of the two arms of the dual state onto their respective leaderships.

Like the party-state in the Soviet era, the regime-state has its own "inner constitution" to prevent intra-elite struggles from growing into

internecine warfare or even bloodletting of the type that afflicted the country under Stalin and in 1993. The inner constitution regulates the behavior of the shadow state to constrain intra-elite conflict. In a system where the winner does *not* take all, every faction has enough of a stake to ensure its loyalty, and none is allowed to gain predominance to threaten the existence of the others. This is a type of intra-elite cartel pluralism that compensates for the weakness of formal institutions. Democracy may well have emerged to regulate intra-elite conflict, but in this shadow world a para-political approach to conflict management is imposed. A form of self-limiting politics is practiced, where the system is bound together by loyalty to the leadership while personal agendas are achieved within the framework of a specific faction. Such a system encourages corruption and lack of responsibility and, thus, undermines the coherence of governance as a whole. Para-constitutional and para-political functionality is unable to provide a coherent basis for rule, and, thus, post-communist Russia has once again become a manually-operated "stability system," where a tenuous stability is maintained by administrative action and is not derived from the inherent logic of a coherent political order (*Ordnung*). Instead, there is a permanent contradiction between the inner constitution and the constitutional state, based on very different logics of governmentality, which is clearly disruptive of the logic of both and destructive of effective governance in its entirety.

## THE AUTONOMY OF THE CONSTITUTIONAL STATE

The application of the dual state model in contemporary Russia is premised on the commensurability of the two pillars. While there is an extensive literature examining the authoritarian aspects of the system, including criticism of the excessive powers of the presidency and the increasingly managed nature of democratic politics and the manipulation of the electoral system, the counter-movement is less studied. The argument of this article is that both trends are present, and that out of this historical impasse the present stasis of Russian politics emerges.

The institutions of democracy remain central to political practice and democracy remains the legitimating ideology of the regime, but politics operate at two levels, the formal constitutional (the normative state) and the nominal para-constitutional and para-political (the administrative regime). The persistence of a strong constitutional level is reflected in the agonism that is much in evidence in the discourse of the public sphere, where intellectuals, scholars, journalists, and politicians conduct a vigorous debate, tolerated by the regime as long as this does not take structured independent form. It is precisely the interaction of the two levels that gives ample scope for the "two camps" in the study of Russian politics—the "democratic evolutionists" who stress the evolutionary potential of the system to move towards greater constitutionalism and political pluralism (Chebankova, 2009), and the "failed transitionists," who argue that democracy has been "derailed" in Russia (Fish, 2005, p. 1)—to put forward

their arguments with some credibility (Sakwa, 2008b). The two levels have their own institutional logic and legitimating discourses. It is this dualism that gives Russian politics its permanent sense of a double bottom.

The duality of the system is reflected in what Montesquieu recognized as the mechanical "*distribution des pouvoirs* [powers]" rather than the constitutional "*séparation des pouvoirs*." Technocratic managerialism blurs functional differentiation between the various branches of government, but does not repudiate the distinct logics on which executive, legislative, and judicial authority is based. Russian governance thus operates with a hybrid mix of the mechanical and constitutional separation of powers, yet another indication of the absence of a coherent *Ordnungspolitik* in Russia. Key constitutional principles are not sustained by political practices; but the constitution still constrains behavior and acts as a normative boundary-setter for the system as a whole (although when it comes to executive powers, the borders, admittedly, are set rather wide, but in formal terms remain within accepted democratic limits). Russia's administrative regime operates according to a tutelary logic, standing as a force above competitive politics, but does not repudiate the logic of political pluralism, the rule of law, and the autonomy of the normative state. Between the rationalism of the normative state and the functionalist managerialism of the administrative regime, para-constitutional political practices flourish.

The struggle for genuine constitutionalism is the cornerstone of the "normative" pillar of our political diarchy, and hence, we argue that the "constitutional state" is the protagonist of the administrative regime. The constitutional state is based preeminently on the formal order of institutions, and thus, its practices are unlike the factionalized politics of the administrative regime. Its adherents are found in legal-constitutional structures, among the liberal intelligentsia and those who have advanced into the elite up the electoral ladder. The latter route for independent politicians was increasingly blocked by the suffocating regulations imposed on the electoral process by the administrative regime, but even elites advanced within the regime system, notably through the increasingly dominant United Russia party, are receptive to the discourse of "modernization" and the overcoming of "legal nihilism," the program advanced by Medvedev. By definition, the defenders of constitutionalism and the rule of law appeal to openness and due process, although that does not preclude some factional fighting of their own. The administrative regime not only appeals to the legitimacy derived from the formal operation of the norms and procedures of the constitutional state, but its agents and concrete institutions ultimately allow the administrative system to function as a hybrid order, locked in stalemate and not degenerating into full-scale authoritarianism.

The Yukos affair revealed the ability of the regime to apply "telephone law"—that is, to influence judicial outcomes (Ledeneva, 2008). The Yukos affair was a classic case of a "prosecution to order" (*zakazannoye delo*) accompanied by the malpractices that became known as "Basmannoye justice" (*Basmannoye pravosudiye*, 2003). These were indeed defined

as malpractices by the Russian public sphere, and ultimately remained susceptible to remedy. However imperfect the 1993 constitution may be, it provides the framework for the development of a pluralistic political society and open public sphere, and as long as the system remains dual, a dynamic of renewal persists. Under Putin, especially in the early years, considerable effort was devoted to strengthening the judiciary as an institution and the legal system as a whole. Measures included the adoption of a new Criminal Procedural Code, shifting the power of detention from prosecutors to the courts, significant wage rises for judges to insulate them from the pressure of bribes, an increase in the number of judges by a quarter, and an extensive program of court building and refurbishment. The legal-constitutional pillar was reinforced in institutional terms, but the independence of the judiciary was undermined by the continued application of Basmannoye justice (which can be characterized as meta-corruption, where the administrative authorities can trump the independence of the courts) and numerous varieties of venal corruption, including the use of "intermediaries" to help fix outcomes. Meta-corruption in Russia, moreover, was fostered by "the inseparability of power and ownership as well as the dominance of the bureaucracy in the system of public decision-making" (Rimsky, 2009, p. 105). In other words, it was too often unclear where politics ended and business began, and vice versa.

The goal of universalistic law has been proclaimed by all leaders since Gorbachev, and both Putin and Medvedev, with their legal backgrounds, have proclaimed the supremacy of law (*gospodstvo zakona*), although the achievement falls far short of the ambition. Post-communist Russia has been in a permanent state of exception, exercised not through constitutional provisions of some sort defining a state of emergency, but through an informal and undeclared derogation from constitutional principles. This is exercised by the administrative regime, which in the long-term undermines the viability of constitutionalism as a whole. Regimes of exception elsewhere, notably in Malaysia and Singapore, have been unable "to return to a state of normalcy" (Jayasuriya, 2001, p. 110). In Russia, however, the state of exception has not become the norm and coexists with the normal exercise of law, and thus, the two orders operate in parallel. It is this feature that endows Russian politics with its schizophrenic character, where two shifting axes of power provide a kaleidoscopic vista of permanent change against the background of a deadlocked system. This permanent flux is not so much a mode of governance but the reverse, where purposive action by the government gets bogged down in a fundamentally chaotic, and thus quasi-anarchic, governmental order. Rules and institutions have meaning and define behavior at one level, but there is always a second level where the operative codes are personalized and voluntaristic.

The dual state model is predicated on the existence of a constitutional state functioning separately from the dominant power system (in our case, the administrative regime). Fraenkel's study dealt with a constitutional system with an entrenched professional ethos accompanied by long-standing traditions of judicial independence. The insertion of an



alternative rationality by the prerogative state was openly proclaimed and recognized by the normative state, although balanced and tempered by continuing allegiance to Germany's tradition of positive law. Indeed, it was precisely the positivist declension of judicial authority that allowed the usurpation of natural law principles, as long as they were adopted through an appropriate form of legitimate authority. The Nazi regime officially declared its advocacy of radical policies, and they were inserted as elements of a new governmental order; this helps explain how the regime was able so effectively to reorder social life according to its novel precepts.

In Russia, the mode of operation and legitimating practices are very different. The regime explicitly repudiates appeal to supra-constitutional populist or nationalist norms, and instead, its logic of action is grounded in precisely law-based normativity and the rejection of the exceptional (*Ausnahmezustand*). The foundation of Putinism as a ruling ideology is the goal of transcending the revolutionary ethos (in particular, of the Soviet period) and the consolidation of the technocratic routinization of political power. The practice of *Ausnahmezustand* in Russia is achieved by subterfuge and given no positive formal recognition, and the infringement of the rule of law and the autonomy of competitive politics is somehow "normalized" without appeal to higher principles exterior to the constitutional state itself. Thus, the infringement of the rule of law is justified not by the logic of the exception but by an appeal to the "dictatorship of law" itself. The legitimization of unlawful acts by an appeal to law is one of the fundamental contradictions of Putinite governmentality, and it fostered the "legal nihilism" that had become so entrenched by the end of his presidency.

The blurring of not only the practices but also the legitimations of the two orders discredited the constitutional state and brought the whole legal system into disrepute. The exceptional practices of the administrative regime differ from what Fraenkel observed in Nazi Germany. The exploitation of the legitimating norms of the constitutional state to justify the practices of the administrative regime means that the latter lacks the delineated features of the prerogative state in Germany, accompanied by the degradation of the values of the constitutional state. The lack of a clear-cut distinction between the politics of the exception and the normal rules corrupts the institutions and practices of the constitutional state but does not deny them. Opinion surveys reflect an orientation towards the most effective part of the system, in particular the presidency, and reveal a loss of confidence in the institutions of the constitutional state and the associated representative and aggregative agencies of political society, preeminently parties and parliament. As the administrative regime seeks to reduce the institutions of the constitutional state to malleable agencies of its own power, it exploits the symbols and resources of the constitutional state and thereby subverts them.

The dependence of the Russian political regime on the legitimating practices of the constitutional state renders it vulnerable to normative

and political renewal originating in the constitutional arena. In return, the constitutional state demands a price, and thus renders the system more than the mutual dependence of the two orders. The administrative regime, by its self-definition, is not only parasitic but also developmental. The administrative regime from Yel'tsin to Medvedev was created as a purposive actor that could transcend the blockages within the social order by standing above formal political conflicts and managing democratic interactions. The relationship between the two orders in present circumstances therefore is mutually constitutive. The administrative regime claims to advance constitutionalism and the rule of law (in its own "Russian" way), and this claim is not nugatory if it is accepted that this entails a specific vision of the relationship between state and society (Richter, 2009b). The interaction between the two systems sustains the possibility of a renewal and reinvigoration of the constitutional state that would limit and possibly ultimately transcend the para-political practices of the administrative regime. However, the impasse in relations between the administrative regime and the constitutional state creates a blockage of its own. Ultimately, the stalemate will be transcended only by a full-scale reversion to an overtly authoritarian order in which the administrative regime will gain indisputable pre-eminence, possibly in the form of a shift from a dominant power system, in effect at present, to a dominant party system; or for the constitutional state to extend its dominion in which it can no longer tolerate elements of "domain democracy" in the form of the usurped prerogative powers exercised by the administrative regime.<sup>8</sup>

The struggle for the autonomy of the constitutional state is rooted in substantive realities and brings together defined political actors and social constituencies. It is for this reason that Kathryn Hendley makes the convincing case that, "Over the last two decades, with surprisingly little fanfare, the legislative base and institutional infrastructure of the Russian legal system have undergone a remarkable transformation" (Hendley, 2009a, p. 339). This is demonstrated by a dramatic increase in Russians' use of the courts, with a doubling in the number of civil (non-criminal) cases in the last decade. However, when powerful business or political interests are involved, courts are avoided; and the persistence of "telephone law" means that "the Kremlin has been able to dictate the outcome of cases in which it takes a strong interest," with the Yukos affair only the best-known example (Hendley, 2009b, p. 257). This has given rise to a "dual legal system": there is some measure of predictability in normal circumstances and the courts "can be relied on to handle mundane cases," but are suborned by the powerful in "exceptional" instances, rendering the system a "far cry from the rule-of-law-based state that was the initial goal" (Hendley, 2009a, p. 340).

<sup>8</sup>The classic case of a "domain democracy" was the supra-constitutional role traditionally exercised by the military in Turkey. See Merkel (2004).

Thus "rule by law" coexists with "rule of law," a feature that, in Hendley's view, "has been a reality in Russian life for decades, if not centuries" (Hendley, 2009b, p. 258). Studies of the late tsarist and Khrushchev eras reveal the same process at work. There is now equilibrium between the two systems, which, in her view, could last a long time, since "In its current form, the Russian legal system meets the short-term needs of both state and society" (Hendley, 2009b, p. 262). This is a crucial feature of the stalemate that we discussed above. However, there are external factors at work that reinforce the legal-constitutional pillar in Russia, notably membership of the Council of Europe. As Trochev shows, "the Russian courts draw on the ECtHR [European Court of Human Rights] to support both their independence from law enforcement authorities and their judicial power in the sense of requiring government agencies to carry out judicial decisions" (Trochev, 2009, p. 166). Medvedev has also appealed to external normative constraints as a stimulus for domestic legal consolidation. In his December 2, 2008 speech to the seventh Russian congress of judges, for example, he complained about the high number of cases from Russia before the ECtHR, noting, "The Strasbourg court and indeed any international court, however much we respect them, clearly should not and must not take the place of Russian justice. And in that sense our courts should be absolutely independent" (Medvedev, 2008).

## CONCLUSION

Contemporary Russia is faced not only by economic modernization tasks, the core of Medvedev's program, but also by the requirement to modernize the political system by increasing the effectiveness of existing institutions. This can only be achieved by reducing the informal powers of the administrative regime to allow more autonomy to public politics. In other words, the fundamental challenge is to ensure that political practices are brought into greater conformity with constitutional norms, above all, by limiting the prerogative powers of the regime and thus reducing the duality of the system. Two orders operate in parallel, and neither system is allowed to work within the full capacity of the logic of its own dynamics. Thus, neither works very well, leading to a crisis of governance and the rampant proliferation of institutional nihilism. This is a paradoxical outcome in a system that is variously described as a competitive if not an outright authoritarian system (Levitsky and Way, 2010). Ironically, the deeper the crisis, the greater the emphasis on administrative governance, but this is more an indication of weakness than strength, and only exacerbates hybridity and, thus, crisis.

A fundamental feature of our model of the dual state, however, is the potential for existing institutions and processes to become autonomous in their own right. Just as the Soviet system nurtured institutions—notably, union republics based on a titular nationality, which emerged as independent actors when the regime, seized by a democratizing impulse, weakened in the late 1980s—so today there remains a powerful latent potential

in the formal institutions of post-communist Russian democracy. Paradoxically, the formal constitutional political order becomes a "subversive institution" writ large, in the manner described by Bunce (1999). Parties, parliament, the judiciary, and the whole juridico-constitutional system established in the early 1990s have the potential to evolve within the existing order. The federal system under Putin lost its autonomous character, but federal institutions have been preserved and could come to life in different circumstances. The tension between constitutional federalism and unitary political practices, as in the Soviet system, provokes a permanent contradiction. In this sphere and in others, there is a conflict between the latent and the actual.

Democratic evolutionists see plenty of potential for the development of a more robust adherence to the spirit of legality, despite present setbacks. There is also considerable scope for institutional development in the present constitutional order. It would take little more than the adoption of a federal constitutional law to enact what Charles de Gaulle was so opposed to in 1962: a government of the parliamentary majority. Genuine constitutionalism and the rule of law may well develop in Russia without necessarily having to change the letter of the constitution. The normative state remains the source of constitutional renewal. It is for this reason that evolutionary gradualism in contemporary Russia could achieve the most profound revolutionary transformation in social relations and ultimately transform the quality of democracy. Another revolutionary overthrow of the existing regime, as advocated by "Leninist liberals" such as Garry Kasparov and the United Civic Front (OGF), would only reinforce political voluntarism and arbitrariness.<sup>9</sup>

In office, Medvedev disappointed those who had, rather unrealistically, anticipated a Khrushchev-style thaw, let alone a "secret speech" condemning his predecessor. While continuity was reaffirmed and embodied by the tandem, there were powerful indications of change to the regime from within. Medvedev's presidency was characterized by an inchoate but generalized striving to overcome the dual system in both the economy and politics. The normative state remained the source of constitutional and political renewal, but the administrative regime was reluctant to relinquish the depoliticized managerial power that allows it to trump the spirit of constitutionalism with para-political practices.

A powerful and critical public sphere acts to highlight the inadequacies of the depoliticizing leadership of the administrative regime. Medvedev's election certainly did not mean the swift subordination of the willfulness

<sup>9</sup>It should be stressed that even the most resolute of the "Leninist liberals" do not advocate the violent overthrow of the present order, but propose unrelenting struggle against its authoritarian features within the bounds of law and the constitution. Of course, there are movements further to the left and right that are less fastidious. The political dilemma then for opponents of the current regime is the degree to which a common front is possible across the spectrum, the fundamental question faced by the Other Russia (*Drugaya Rossiya*) movement.

and factionalism of the administrative regime to the normative state, but it did signal the potential for the gap to close. The balance of risk turned against the administrative regime, but its operating practices were by no means overcome. A line in the sand exists, and on that basis the constitutional state retains the potential to extend its hegemony, and thus the passive revolution could be transcended to allow the development of an active and autonomous polity.

## REFERENCES

- Amsterdam, Robert R., *The Dual State Takes Hold in Russia*, Royal Institute for International Affairs, London, UK, unpublished manuscript, February 7, 2008.
- Basmannoye pravosudiye: Uroki samooborony: Posobiye dlya advokotov ("Basmannoye justice. Lessons in self-defence. Guidelines for lawyers). Moscow: Publichnaya reputatsiya, 2003, available at [www.ip-centre.ru/books/Basmannoe.pdf](http://www.ip-centre.ru/books/Basmannoe.pdf).
- Bunce, Valerie, *Subversive Institutions: The Design and the Destruction of Socialism and the State*. Cambridge, UK: Cambridge University Press, 1999.
- Burlatskiy, Fedor Mikhailovich, *The Modern State and Politics*. Moscow: Progress Publishers, 1978.
- Chebankova, Elena, "The Evolution of Russia's Civil Society under Vladimir Putin: A Cause for Concern or Grounds for Optimism?," *Perspectives on European Politics and Society*, 10, 3:394–416, September 2009.
- Cox, Robert W., "Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order," *Review of International Studies*, 25, 1:13–28, January 1999.
- Diamond, Larry, "Thinking About Hybrid Regimes," *Journal of Democracy*, 13, 2:21–35, April 2002.
- Dunlop, John B., *The Rise of Russia and the Fall of the Soviet Empire*. Princeton, NJ: Princeton University Press, 1993.
- Evans, Alfred B. Jr., "The First Steps of Russia's Public Chamber: Representation or Coordination?," *Demokratizatsiya*, 16, 4:345–362, Fall 2008.
- Fish, M. Steven, *Democracy Derailed in Russia: The Failure of Open Politics*. New York: Cambridge University Press, 2005.
- Fraenkel, Ernst, *The Dual State: A Contribution to the Theory of Dictatorship*. Clark, NJ: The Lawbook Exchange, Ltd, 2006.
- Furman, Dmitry, "A Silent Cold War," *Russia in Global Affairs*, 4, 2, April–June 2006, available at <http://eng.globalaffairs.ru/numbers/15/1020.html>.
- Furman, Dmitri, "Imitation Democracies: The Post-Soviet Penumra," *New Left Review*, 54:29–47, November–December 2008.
- Gerber, David J., "Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the 'New' Europe," *American Journal of Comparative Law*, 42, 1:25–84, Winter 1994.
- Hale, Henry E., *Why Not Parties in Russia? Democracy, Federalism and the State*. Cambridge, UK: Cambridge University Press, 2006.
- Hendley, Kathryn, "Rule of Law, Russian-Style," *Current History*, 108, 720:339–340, October 2009a.
- Hendley, Kathryn, "'Telephone Law' and the 'Rule of Law': The Russian Case," *Hague Journal on the Rule of Law*, 1, 2:241–262, September 2009b.
- Huskey, Eugene, "The State-Legal Administration and the Politics of Redundancy," *Post-Soviet Affairs*, 11, 2:115–143, April–June 1995.
- Huskey, Eugene, *Presidential Power in Russia*. Armonk, NY: M. E. Sharpe, 1999.
- Jayasuriya, Kanishka, "The Exception Becomes the Norm: Law and Regimes of Exception in East Asia," *Asian-Pacific Law & Policy Journal*, 2, 1:108–124, Winter 2001.
- Knoops, Geert-Jan Alexander and Robert R. Amsterdam, "The Duality of State Cooperation Within International and National Criminal Cases," *Fordham International Law Journal*, 30, 2:260–295, January 2007.
- Kurginyan, Sergey, *Kacheli: Konflikt elit—ili razval Rossii?* (The swing: A conflict of elites or the collapse of Russia?). Moscow: Eksperimental'nyy tvorcheskiy tsentr, 2008.
- Ledeneva, Alena, "Telephone Justice in Russia," *Post-Soviet Affairs*, 24, 4:324–350, October–December 2008.
- Levitsky, Steven and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War*. New York: Cambridge University Press, 2010.
- March, Luke, "Managing Opposition in a Hybrid Regime: Just Russia and Parastatal Opposition," *Slavic Review*, 68, 3:504–527, Fall 2009.
- McFaul, Michael, *Russia's Unfinished Revolution: Political Change from Gorbachev to Putin*. Ithaca, NY: Cornell University Press, 2001.
- Medvedev, Dmitriy, "Vystupleniye na VII Vserossiyskom s'ezde sudey (Speech at the VII National Congress of Judges)," Moscow, December 2, 2008, available at [www.kremlin.ru/transcripts/2283](http://www.kremlin.ru/transcripts/2283).
- Merkel, Wolfgang, "Embedded and Defective Democracies," *Democratization*, 11, 5:33–58, December 2004.
- Ob Obshchestvennoy Palate, "Ob obshchestvennoy Palate Rossiyskoy Federatsii. Federal'nyy zakon Rossiyskoy Federatsii ot 4 aprelya 2005 g. N 32-FZ (On the Public Chamber of the Russian Federation. Federal law of the Russian Federation of April 4, 2005)," available at <http://document.kremlin.ru/index.asp>.
- Oversloot, Hans, "Reordering the State (without Changing the Constitution): Russia under Putin's Rule, 2000–2008," *Review of Central and East European Law*, 32, 1:41–64, 2007.
- Reuter, Ora John and Thomas F. Remington, "Dominant Party Regimes and the Commitment Problem: The Case of United Russia," *Comparative Political Studies*, 42, 4:501–526, April 2009.
- Richter, James, "Putin and the Public Chamber," *Post-Soviet Affairs*, 25, 1:39–65, January–March 2009a.
- Richter, James, "The Ministry of Civil Society? The Public Chambers in the Regions," *Problems of Post-Communism*, 56, 6:7–20, November–December 2009b.
- Riggs, F., "The Survival of Presidentialism in America: Para-Constitutional Practices," *International Political Science Review*, 9, 4:247–278, 1988.
- Rimsky, V. L., "Bureaucracy, Clientelism and Corruption in Russia," *Russian Polity: The Russian Political Science Yearbook (2007–2008)*. Moscow: Politeia, 2009, available online at <http://russianpolity.ru/content9/>.
- Sakwa, Richard, "The Regime System in Russia," *Contemporary Politics*, 3, 1:7–25, 1997.
- Sakwa, Richard, *Russian Politics and Society*, fourth edition. London, UK: Routledge, 2008a.
- Sakwa, Richard, "Two Camps? The Struggle to Understand Contemporary Russia," *Comparative Politics*, 40, 4:481–499, July 2008b.
- Sakwa, Richard, *The Quality of Freedom: Putin, Khodorkovsky and the Yukos Affair*. Oxford, UK: Oxford University Press, 2009.

- Sakwa, Richard, "Dualistichnoye gosudarstvo v Rossii: parakonstitutsionalizm i parapolitika (The dual state in Russia: paraconstituionalism and parapolitics)," *Polis: Politicheskiye issledovaniya*, 1:8–26, 2010a.
- Sakwa, Richard, *The Crisis of Russian Democracy: The Dual State, Factionalism and the Medvedev Succession*. Cambridge, UK: Cambridge University Press, 2010b.
- Schmitt, Carl, *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press, 1985.
- Sharlet, Robert, "Stalinism and Soviet Legal Culture," in Robert C. Tucker, ed., *Stalinism: Essays in Historical Interpretation*. New York: W. W. Norton, 1977.
- Shevtsova, Lilia, "Russia's Hybrid Regime," *Journal of Democracy*, 12, 4:65–70, October 2001.
- Sixsmith, Martin, *Putin's Oil: The Yukos Affair and the Struggle for Russia*. London, UK: Continuum, 2010.
- Smith, Gordon B., *Reforming the Russian Legal System*. Cambridge, UK: Cambridge University Press, 1996.
- Tilly, Charles, *Democracy*. Cambridge, UK: Cambridge University Press, 2007.
- Trochev, Alexei, "All Appeals Lead to Strasbourg?: Unpacking the Impact of the European Court of Human Rights on Russia," *Demokratizatsiya*, 17, 2:145–178, Spring 2009.
- Volkov, Vadim, *Violent Entrepreneurs: The Use of Force in the Making of Russian Capitalism*. Ithaca, NY: Cornell University Press, 2002.
- Yurgens, Igor Y., ed., *Russia's Future Under Medvedev*, English edition edited by Professor Lord Skidelsky. Warwick: Centre for Global Studies, 2008.

## "Loans for Shares" Revisited

Daniel Treisman<sup>1</sup>

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**Abstract:** The "loans for shares" scheme of 1995–1996—in which a handful of well-connected businessmen bought stakes in major Russian companies—is widely considered a scandalous affair that had disastrous consequences for the Russian economy. Fifteen years later, the details of the program are reexamined in light of evidence available today. The conventional wisdom about "loans for shares" is analyzed in terms of how much of the market the stakes involved represented; the pricing in terms of international practice; the scheme's place in Russia's increasing wealth inequality; who the biggest beneficiaries were; and the firms' role in Russia's rapid growth after 1999.

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On November 3, 1995, in the remote Siberian town of Surgut, an auction took place for the right to lend the cash-strapped Russian government tens of millions of dollars. As collateral for the loan, the government had pledged a 40 percent stake in the country's fifth-largest oil company, Surgutneftegaz. Two bidders made it into the auction room; a third had been disqualified because of problems with the applicant's paperwork. Had any others planned to fly out from Moscow to participate, they would have had trouble: the local airport mysteriously chose to close that day. When, late in the evening, the participants emerged, the winner turned out to be Surgutneftegaz's own pension fund.

Thus began what came to be known as "loans for shares." This program, under which stakes in 12 companies were eventually sold to selected private investors, quickly took on mythic proportions in accounts

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<sup>1</sup>Professor of Political Science, University of California, Los Angeles, and NBER Research Associate. The author thanks Serguey Braguinsky, Lev Freinkman, Scott Gehlbach, Martin Gilman, Sergei Guriev, Andrei Shleifer, and Konstantin Sonin for comments and valuable conversations, and the UCLA College of Letters and Science for financial support. A version of this article circulated as NBER Working Paper No. 15819. The analysis draws at various points on a brief discussion of loans for shares in Shleifer and Treisman (2005, pp. 161–162). A short summary of the argument appears in Treisman (2010).